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Nos. 90-757 and 90-1032

In the Supreme Court of the United States

OCTOBER TERM, 1990

RONALD CHISOM, ET AL., PETITIONERS

v.

CHARLES E. ROEMER, ET AL.

UNITED STATES OF AMERICA, PETITIONER

v.

CHARLES E. ROEMER, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

JOINT APPENDIX

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PETITIONS FOR WRITS OF CERTIORARI FILED NOVEMBER 14, 1990 (No. 90-757) AND DECEMBER 28, 1990 (No. 90-1032)
CERTIORARI GRANTED JANUARY 18, 1991

BEST AVAILABLE COPY

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UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF LOUISIANA

No. 86-4075

RONALD CHISOM AND UNITED STATES

v.

CHARLES E. ROEMER, ET AL.

RELEVANT DOCKET ENTRIES

DATE FILED	DOCUMENT
9/19/86	Complaint.
	* * *
9/30/86	Pltf's amended complt.
	* * *
5/1/87	OPINION that defts' mtn to dismiss for failure to state a claim upon which relief can be granted is granted; unless pltfs' complt is amended w/in 10 days of entry of this opinion clerk of Court is directed to enter judg dismissing pltfs' claim at their costs.
	* * *
5/7/87	Pltf's *NOTICE OF APPEAL* to 5th Circuit from judg of 5/1/87 granting deft's mtn to dismiss.
	* * *

DATE FILED	DOCUMENT
5/31/88	JUDGMENT FROM 5TH CIRCUIT – ORDERED that judg of D.C. is REVERSED & case is REMANDED to D.C. for further proceedings. (Brown, Johnson & Higginbotham) issd as mandate 5/27/88.
	• • •
8/8/88	INTERVENTION OF U.S.A.
8/15/88	ANSWER of defts to pltfs' complt.
	• • •
4/4/89	ANSWER of defts to intervention.
	• • •
4/5/89	NON JURY TRIAL dktd 4/6/89.
	• • •
9/13/89	OPINION – Clerk is directed to enter judg in favor of defts dismissing pltf's claims. (CSjr) dltd 9/13/89.
9/14/89	JUDGMENT is ORDERED in favor of all defts & agst all pltfs & U.S.A. as intervenor, dismissing suit w/prj, pltfs to bear all costs. 9/13/89 dktd 9/14/89.
	• • •
9/15/89	Pltfs' *notice of appeal* from final judgment entered on 9/13/89.
	• • •
11/13/89	*Notice of appeal* by U.S.A. from judg entered 9/14/89.

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 87-3463

RONALD CHISOM, ET AL.

v.

EDWIN EDWARDS, ET AL.

RELEVANT DOCKET ENTRIES

DATE FILED	DOCUMENT
	• • •
2/29/88	Opinion rendered.
	• • •

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 89-3654

RONALD CHISOM AND UNITED STATES

v.

CHARLES E. ROEMER, ET AL.

RELEVANT DOCKET ENTRIES

DATE FILED	DOCUMENT
* * *	
11/02/90	Opinion rendered – remanded.
* * *	

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

CIVIL ACTION NUMBER 86-4075

RONALD CHISOM, MARIE BOOKMAN, WALTER WILLARD, MARC MORIAL, LOUISIANA VOTER REGISTRATION/ EDUCATION CRUSADE, AND HENRY A. DILLON, III
PLAINTIFFS

versus

EDWIN EDWARDS, IN HIS CAPACITY AS GOVERNOR OF THE STATE OF LOUISIANA; JAMES H. BROWN, IN HIS CAPACITY AS SECRETARY OF THE STATE OF LOUISIANA; AND JERRY M. FOWLER, IN HIS CAPACITY AS COMMISSIONER OF ELECTIONS OF THE STATE OF LOUISIANA
DEFENDANTS

Section A
Magistrate 6

CLASS ACTION
THREE JUDGE COURT

AMENDED COMPLAINT

I. PRELIMINARY STATEMENT

This action is brought by the plaintiffs on behalf of all black registered voters in Orleans parish to challenge the election of Justices to the Louisiana Supreme Court from the New Orleans area. Plaintiffs contend that the present system of electing judges, whereby the parish of Orleans, St. Bernard, Plaquemines, and Jefferson elect two Justices to the Louisiana Supreme Court at-large, is a violation of

the 1965 Voting Rights Act, as amended, 42 U.S.C. Section 1973 because it dilutes the voting strengths of plaintiffs.

II. JURISDICTION

This is an action for declaratory and injunctive relief brought pursuant to 42 U.S.C. Section 1973 and 42 U.S.C. Section 1983. This Court has jurisdiction pursuant to 28 U.S.C. Section 1331 and Section 1343 as well as 42 U.S.C. Section 1973.

Plaintiffs also seek declaratory and other appropriate relief pursuant to 28 U.S.C. Sections 2201 and 2202.

Plaintiffs' claims under the Voting Rights Act and under the Fourteenth and Fifteenth Amendments to the U.S. Constitution must be determined by a district court of three judges pursuant to 28 U.S.C. Sect. 2284 (a).

III. PARTIES

The individual plaintiffs are all black registered voters in Orleans parish. The organizational plaintiff is a non-profit corporation comprised of Orleans Parish black registered voters active in voting rights issues. The plaintiffs sue on behalf of themselves and all other black registered voters in Orleans parish.

Edwin Edwards is Governor of the State of Louisiana. He is sued in his official capacity of Governor. Mr. Edwards has the duty to support the Constitution and laws of the State of Louisiana and of the United States and to see that these laws are faithfully executed.

James H. Brown is Secretary of the State of Louisiana. He is sued in that official capacity. As Secretary of State, Mr. Brown has the duty to prepare and certify the ballots for all elections, promulgate all election returns and administer the election laws of Louisiana.

Jerry M. Fowler is Commissioner of Elections of the State of Louisiana. He is sued in that official capacity. As

Commissioner of Elections, he has the duty to work closely with the office of the Secretary of State to prepare and certify the ballots for all elections held in Louisiana.

IV. CLASS ACTION ALLEGATIONS

This matter is brought as a class action pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure, on behalf of all black persons who are residents and registered voters of Orlean parish, State of Louisiana.

The number of persons who would be included in the above-defined class would be approximately 135,000.

Plaintiffs are adequate representatives of the class in that they are similarly situated with the rest of the members of the class. There are no actual or potential conflicts of interest and the attorneys for plaintiffs are competent and able to handle the litigation.

The questions of law and fact common to the class are those implicit in this complaint including whether the defendants should be ordered to comply with the Voting Rights Act in the election of Justices to the Louisiana Supreme Court from the New Orleans area.

V. FACTS

The State of Louisiana elects seven Justices to the Louisiana Supreme Court.

The method of electing Justices to the Louisiana Supreme Court is set out at Louisiana Revised Statute 13:101. This statute orders that the state be divided into six Supreme Court districts which elect seven Justices. Each of the Supreme Court districts elects one Justice, except for the First Supreme Court district which elects two Justices at-large.

The First Supreme Court district is made up of the parishes of Orleans, St. Bernard, Plaquemines, and Jefferson, from which two Justices are elected at-large.

The First District is the only Supreme Court district in Louisiana that is not a single member district.

The First Supreme Court District of Louisiana contains approximately 1,102,253 residents of which 63.36% or 698,418 are white and 379,101 or 34.4% are black. The voter registration data for the First Supreme Court District of Louisiana indicates a total registered voter population of 515,103. Of this total, 350,213 or 68% are white and 162,810 or 31.61% are black.

If the First Supreme Court District of Louisiana were divided into two single member districts, the average population would be approximately 551,126 persons in each district. Because Orleans parish's present population is 555,515, the most logical division of the district into two single member districts would have Orleans parish electing one Supreme Court Justice and the parishes of Jefferson, St. Bernard, and Plaquemines together electing the other Supreme Court Justice.

If the present First Supreme Court District was divided as indicated in the preceding paragraph, the Orleans parish district would have a black population and voter registration majority. The Orleans parish district would have 236,987 white residents or 42.5% and 308,149 black residents or 55.3%. The voter registration figures indicate that the district would have 124,881 white voters or 47.9% and 134,492 black voters or 51.6%.

The Supreme Court district which would be comprised of Jefferson, Plaquemines, and St. Bernard would have a total population of 544,738 of which 461,431 or 84.7% would be white and 70,952 black residents or 13.0%. The voter registration data indicates that 225,332 registered voters are white or 88.5% while 28,318 black voters are also registered or 11.1%.

Because of the official history of racial discrimination in Louisiana's First Supreme Court District, the wide spread prevalence of racially polarized voting in the district, the continuing effects of past discrimination on the plaintiffs, the small percentage of minorities elected to public office in the area, the absence of any blacks elected to the Louisiana Supreme Court from the First District, and the lack of any justifiable reason to continue the practice of electing two Justices at-large from the New Orleans area only, plaintiffs contend that the current election procedures for selecting Supreme Court Justices from the New Orleans area dilutes minority voting strength and therefore violates the 1965 Voting Rights Act, as amended.

VI. CAUSES OF ACTION

The defendants are in violation of Section 2 of the 1965 Voting Rights Act, as amended, 42 USC Section 1973 because the present method of electing two Justices to the Louisiana Supreme Court at-large from the New Orleans area impermissibly dilutes minority voting strength.

The defendant's actions are in violation of the Fourteenth and Fifteenth Amendments to the United States Constitution and 42 USC Section 1983 in that the purpose and effect of their actions is to dilute, minimize, and cancel the voting strength of plaintiffs.

VII. EQUITY

This action is an actual controversy between parties having adverse legal interests of such immediacy and reality as to warrant a declaratory judgment.

Plaintiffs have no adequate remedy at law and will suffer irreparable injury unless injunctive relief is issued.

VIII. PRAYER

WHEREFORE, plaintiffs pray for relief as follows:

1. That a District Court of three judges be convened pursuant to 28 U.S.C. Sect. 2284 and 42 U.S.C. Sect. 1973 to adjudicate this matter;

2. That this matter be certified as a class action;

3. That a preliminary and permanent injunction issue against the defendants as follows:

a. Restraining defendants from allowing any further elections of Justices from the First Supreme Court District in accordance with Louisiana Revised Statute 13:101 Subsection 1 until this court makes a decision on the merits of plaintiff's challenge;

b. Ordering the defendants to reapportion the First Louisiana Supreme Court District in a way that fairly recognizes the voting strength of minorities in the New Orleans area and completely remedies the present dilution of minority voting strength.

c. Ordering the defendants to comply with the 1965 Voting Rights Act, as amended, 42 USC Section 1973;

4. That this court declare and determine that the present system of electing two Justices at-large from the parishes of Orleans, St. Bernard, Plaquemines, and Jefferson pursuant to Louisiana Revised Statute 13:101 Sub-section 1 impermissibly dilutes minority voting strength and violates the 1965 Voting Rights Act, as amended, and also violates the Fourteenth and Fifteenth Amendments to the United States Constitution.

5. That attorney fees be awarded to plaintiffs;

6. That there be other such relief as may be necessary and proper.

Respectfully submitted,

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

Civil Action No. 86-4075

RONALD CHISOM, ET AL

versus

EDWIN EDWARDS, ET AL

Section: "A"

AMENDED OPINION

This matter is before the Court on defendants' motion to dismiss for failure to state a claim upon which relief can be granted pursuant to F.R.Civ.P. 12(b)(6). For the foregoing reasons, defendants' motion is GRANTED.

FACTS AND ALLEGATIONS

Ronald Chisom, four other black plaintiffs and the Louisiana Voter Registration Education Crusade filed this class action suit on behalf of all blacks registered to vote in Orleans Parish. Plaintiffs' complaint challenges the process of electing Louisiana Supreme Court Justices from the First District of the State Supreme Court. The complaint alleges that the system of electing two at-large Supreme Court Justices from the Parishes of Orleans, St. Bernard, Plaquemines and Jefferson violates the 1965 Voting Rights Act, as amended, 42 U.S.C. § 1973 the fourteenth and fifteenth amendments to the United States Federal Constitution and, finally, 42 U.S.C. § 1983. Plaintiffs argue that the election system impermissibly dilutes, minimizes and cancels the voting strength of blacks who are registered to vote in Orleans Parish.

More specifically, plaintiffs' original and amended complaint avers that the First Supreme Court District of Louisiana contains approximately 1,102,253 residents of which 63.36%, or 698,418 are white, and 379,101, or 34.4% are black. The First Supreme Court District has 515,103 registered voters, of which 68% are white, and 31.61% are black. Plaintiffs contend that the First Supreme Court District of Louisiana should be divided into two single districts. Plaintiffs suggest that because Orleans Parish's present population is 555,515 persons, roughly half the present First Supreme Court District, the most logical division is to have Orleans Parish elect one Supreme Court Justice and the Parishes of Jefferson, St. Bernard and Plaquemine together elect the other Supreme Court Justice. If plaintiffs' plan were to be carried out, plaintiffs contend the present First Supreme Court District encompassing only Orleans Parish would then have a black population and voter registration comprising a majority of the district's population. More specifically, plaintiffs assert presently 124,881 of the registered voters in Orleans are white, comprising 47.9% of the plaintiffs' proposed district's voters; while 134,492 of the registered voters in Orleans are now black, comprising 51.6% of the envisioned district's voters. The other district comprised of Jefferson, Plaquemines and St. Bernard Parishes and would have a substantially greater white population than black, according to plaintiffs' plan.

Plaintiffs seek class certification of approximately 135,000 black residents of Orleans Parish, whom plaintiffs allege suffer from diluted voting strength as a result of the present at-large election system. Additionally, plaintiffs seek a preliminary and permanent injunction against the defendants restraining the further election of Justices for the First Supreme Court District until this Court makes a determination on the merits of plaintiffs' challenge. Fur-

ther, plaintiffs seek an order requiring defendants to reapportion the First Louisiana Supreme Court in a manner which "fairly recognizes the voting strengths of minorities in the New Orleans area and completely remedies the present dilution of minority voting strength." (Plaintiffs' Complaint, p. 7). Plaintiffs also seek an order requiring compliance with the Voting Rights Act and, finally, a declaration from this Court that the Supreme Court election system violates the Voting Rights Act and the fourteenth and fifteenth amendments to the Federal Constitution.[1]

Defendants do not dispute the figures presented by plaintiffs in their amended complaint. Instead, they contend that section 2 of the Voting Rights Act of 1965, as amended, the fourteenth and fifteenth amendments to the United States Federal Constitution and 42 U.S.C. § 1983 fail to provide plaintiffs grounds upon which relief can be granted for plaintiffs' allegation of diluted black voting strength.

SECTION 2 OF THE VOTING RIGHTS ACT OF 1965 DOES NOT APPLY TO THE INSTANT ACTION

Prior to 1982, section 2 of the Voting Rights Act (42 U.S.C. § 1973), "Denial or Abridgement of Rights to Vote on Account of Race or Color Through Voting Qualifications or Prerequisites," read as follows:

> No voting qualification or prerequisite to voting, or standard, practice, or procedure, shall be imposed or

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[1] Plaintiffs, earlier, sought a three judge court to hear this complaint which was denied by this Court as the terms of 28 U.S.C. § 2284 provide for a three judge court when the constitutionality of the apportionment of congressional districts or the apportionment of any statewide legislative body is challenged. Nowhere does § 2284 provide for convening a three judge court when a judicial apportionment is challenged.

> applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title.

Section 2 of the Voting Rights Act was amended as a response to *City of Mobile, Alabama v. Bolden,* 446 U.S. 55, 100 S.Ct. 1490, 64 L.Ed. 47 (1980), in which the Supreme Court in a plurality opinion held to establish a violation of section 2 of the Voting Rights Act, minority voters must prove the contested electoral mechanism was intentionally adopted or maintained by state officials for a discriminatory purpose. After *Bolden,* Congress in 1982 revised section 2 to make clear that a violation of the Voting Rights Act could be proven by showing a discriminatory effect or result alone. *United States v. Marengo County Commission,* 731 F.2d 1546 n.1 (11th Cir. 1984), *appeal dismissed, cert. denied,* 105 S.Ct. 375, 83 L.Ed.2d 311. (1984)[2] Section 2, as amended, 96 Stat. 134, now reads:

> (a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the rights of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2), as provided in subsection (b) of this section.
>
> (b) A violation of subsection (a) is established if, based on the totality of the circumstances, it is shown

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[2] *See* S.Rep. 97-417, 97 Cong.2d Sess (1982) pp. 15-43 for a complete discussion of Congress' intent to overturn the section 2 "purposeful discrimination" requirement imposed by *Mobile v. Bolden.*

> that the political processes leading to nomination for election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its members have less opportunity than other members of the electorate to participate in the political process and to *elect representatives of their choice*. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: Provided, that nothing in this section establishes a right to have members of a protective class elected in numbers equal to their proportion in the population. 42 U.S.C. § 1973 (emphasis added).

Prior to the 1982 amendments to section 2, a three-judge court composed of Judges Ainsworth, West and Gordon, headed by Judge West, addressed a voting rights claim arsing[*sic*] out of the same claims of discrimination as in this case, albeit not in a section 2 context. *Wells v. Edwards*, 347 F.Supp 453 (M.D. La. 1972), *aff'd*, 409 U.S. 1095, 93 S.Ct. 904, 34 L.Ed.2d 679 (1973). In *Wells*, a registered black voter residing in Jefferson Parish, brought suit seeking a reapportionment of the judicial districts from which the seven judges of the Supreme Court of Louisiana are elected. Ms. Wells sought an injunction enjoining the state from holding the scheduled Supreme Court Justice elections and an order compelling the Louisiana Legislature to enact an apportionment plan in accordance with the "one man, one vote" principle and to reschedule the pending election. On cross motions for summary judgment, the three-judge court stated, "We hold that the concept of one-man, one vote apportionment does not apply to the judicial branch of government." 342 F. Supp. at 454. The *Wells* court took notice of *Hadley v. Junior College District*, 397 U.S. 50, 90 S.Ct. 791, 25

L.Ed.2d 45 (1970), in which the Supreme Court held, "Whenever a state or local government decides to select persons by popular election *to perform governmental functions*, the equal protection clause of the fourteenth amendment requires that each qualified voter must be given an equal opportunity to participate in that election . . . .", 90 S. Ct. 791, 795 (emphasis added), but distinguished its holding by outlining the special functions of judges.

The *Wells* court noted many courts' past delineations between elected officials who performed legislative or executive functions and judges who apply, but not create, law[3] and concluded:

> 'Judges do not represent people, they serve people.' Thus, the rationale behind the one-man, one-vote principle, which evolved out of efforts to preserve a truly representative form of government, is simply not relevant to the makeup of the judiciary.

347 F. Supp. at 455.

The *Wells* opinion interpreted the "one man one vote" principle prior to the 1982 amendments to section 2, which added the phrase, "[T]o elect representatives of their choice." [4] (*See* emphasis in quotation 42 U.S.C. 1973,

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[3] *See, e.g., Stokes v. Fortson*, 234 F. Supp. 575 (N.D. Ga. 1964) ("Manifestly, judges and prosecutors are not representative in the same sense as they are legislators or the executive. Their function is to administer the law, not to espouse a cause of a particular constituency"); *Holshouser v. Scott*, 335 F. Supp. 928 (D.D.C. 1971) ("We hold that the one man, one vote rule does not apply to state judiciary. . . ."); *Buchanan v. Rhodes*, 294 F. Supp. 860 (N.D. Ohio 1966) ("Judges do not represent people, they serve people"); *New York State Assn. of Trial Lawyers v. Rockefeller*, 267 F. Supp. 148, 153 (S.D. N.Y. 1967) ("The state judiciary, unlike the legislature, is not the organ responsible for achieving representative government.")

[4] This language did not appear in section 2 at the time of the *Wells* opinion.

supra.) The legislative history of the 1982 Voting Rights Act amendments does not yield a definitive statement noting why the word "representative" was added to section 2. However, in this case, no such statement is necessary, as "to elect representatives of their choice" is clear and unambiguous.

Judges, by their very definition, do not represent voters but are "appointed [or elected] to preside and to administer the law." *Black's Law Dictionary*, 1968. As statements by Hamilton in the *Federalist*, No. 78 reflect, the distinction between Judge and representative has long been established in American legal history:

> If it be said that the legislative body are themselves the constitutional judges of their own powers, and that the construction they put upon them is conclusive upon the other departments, it may be answered, that this cannot be the natural presumption, where it is not to be collected from any particular provisions in the constitution. It is not otherwise to be supposed that the constitution could intend to enable the representatives of the people to substitute their will to that of their constituents. It is far more rational to suppose that the courts were designed to be an intermediate body between the people and the legislature, in order, among other things, to keep the latter within the limits assigned to their authority. The interpretation of the laws is the proper and peculiar province of the courts. . . .

Indeed, our Federal Constitution recognizes the inherent difference between representatives and judges by placing the federal judiciary in an entirely different category from that of other federal elective offices. It is noteworthy that articles 1 and 2, which establish Congress and the Presidency, are lengthy and detailed, while Article 3,

which establishes the judiciary, is brief and free of direction, indicating the judiciary is to be free of any instructions. Today, Fifth Circuit jurisprudence continues to recognize the long established distinction between judges and other officials. *See, e.g., Morial v. Judiciary Committee of State of Louisiana*, 565 F.2d 295 (5th Cir. 1977) *en banc, cert. denied*, 435 U.S. 1013, 98 S.Ct. 1887 (1978). (See also Footnote 1, *supra*.)

The legislative history of the Voting Rights Act Amendments does not address the issue of section 2 applying to the judiciary,[5] indeed, most of the discussion concerning the application of the Voting Rights Act refers to legisla-

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[5] The Chairman of the Senate Judiciary Committee's Subcommittee on the Constitution, Senator Orrin Hatch, in voicing his strong opposition of the Legislative reversal of *Bolden* through the section 2 revisions, made a brief reference to section 2 applying to judicial elections:

> Every political subdivision in the United States would be liable to have its electoral practices and procedures evaluated by the proposed results test of section 2. It is important to emphasize at the onset that for the purposes of Section 2, the term "political subdivision" encompasses all governmental units, including city and county councils, school boards, judicial districts, utility districts, as well as state legislatures.

S. Rep. 97-417, 97 Cong. 2d Sess. 127, 151, *reprinted in* in 1982 U.S. Code Cong. & Admin. News 298, 323.

Although Senator Hatch's comment indicates coverage of judicial districts by the Voting Rights Act, the purpose of the above passage was to illustrate Senator Hatch's belief that the impact of the section 2 Amendments' "results test" would be far ranging and in his opinion, detrimental. Senator Hatch's comments were included at the end of the Senate report usually reserved for dissenting Senators. The above passage did not portend to be a definative or even a moderately detailed description of the coverage of the Voting Rights Act, nor does Senator Hatch provide any authority for his suggestion of the potential scope of section 2. Rather, this Court finds that the passage was meant to be argumentative and persuasive, and not as a means to define actual scope of the Act.

tive offices. Nevertheless plaintiffs ignore the historical distinction between representative and judge and the lack of any discernible legislative history in their favor and argue that the Voting Rights Act is a broad and remedial measure which must be extended to cover judicial election systems.[6] Plaintiffs rely principally on *Haith v. Martin*, 618 F. Supp. 410 (D.N.C. 1985) (three-judge court), *aff'd*, without opinion, 106 S.Ct. 3268, 93 L.Ed.2d 559 (1986) for the proposition that the Court should ignore *Wells v. Edwards, supra*, and apply section 2 to the allegations contained in their complaint.[7] In *Haith*, the district court held that judicial election systems are covered by section 5 of the Voting Rights Act, which requires preclearance by the U.S. Justice Department of any voting procedures changes in areas with a history of voting discrimination. Plaintiffs, in essence, argue that because the Supreme Court, without opinion, affirmed the *Haith* district court in its application of section 5 to judicial elections, this Court should expand the holding of *Haith* to include section 2 of the Voting Rights Act. Plaintiffs' argument fails because section 5 does not specifically restrict its applica-

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[6] *See e.g., United Jewish Organization of Williamsburg, Inc. v. Carey*, 430 U.S. 144, 97 S.Ct. 996, 51 L.Ed.2d 229 (1977) ("It is apparent from the face of the Act, from its legislative history, and from our cases of the Act itself was broadly remedial in the sense that it 'was designed by Congress to banish the blight of racial discrimination in voting . . .' "), 130 U.S. at 156; *South Carolina v. Katzenbach*, 383 U.S. 301, 86 S.Ct. 803 (1966) (The Voting Rights Act "reflects Congress' firm intention to rid the country of racial discrimination in voting"), 383 U.S. at 315.

[7] Plaintiffs also rely on *Kirksey v. Allain*, Civ. Act. No. J85-0960(B), slip op. (S.D. MS. April 1, 1987), in which a district court dismissed the reasoning in *Wells*, and held section 2 does apply to the elected judiciary. *Wells, supra*, has precedential authority and clearly conflicts with *Kirksey*, an untested lower court opinion.

tion to election systems pertaining to representatives, a restriction included in the 1982 amendments to section 2.

Although a potential conflict may develop between the holdings in *Wells* and *Haith*, *Wells* clearly states the "one man one vote" principle is *not* applicable to judicial elections. This Court recognizes the long standing principle that the judiciary, on all levels, exists to interpret and apply the laws, that is, judge the applicability of laws in specific instances. Representatives of the people, on the other hand, write laws to encompass a wide range of situations. Therefore, decisions by representatives must occur in an environment which takes into account public opinion so that laws promulgated reflect the values of the represented society, as a whole. Judicial decisions which involve the individual or individuals must occur in an environment of impartiality so that courts render judgments which reflect the particular facts and circumstances of distinct cases, and not the sweeping and sometimes undisciplined winds of public opinion.

PLAINTIFFS' FOURTEENTH AND FIFTEENTH AMENDMENT CLAIMS FAIL TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED AS PLAINTIFFS DO NOT PLEAD DISCRIMINATORY INTENT

The appropriate constitutional standard for establishing a violation of the fourteenth amendment in the context of voting rights is "purposeful discrimination." *Village of Arlington Heights v. Metropolitan Housing Corp.*, 429 U.S. 252, 97 S.Ct. 555, 50 L.Ed.2d 450 (1977); [8] *McMillian v. Escambia City, Fla*, 688 F.2d 960 (5th Cir.

[8] In *Village of Arlington Heights v. Metropolitan Housing Corp.*, purposeful discrimination was held the standard necessary to establish a violation of the fourteenth amendment where plaintiff claimed a village rezoning decision was racially discriminatory.

1982).[9] Similarly, *City of Mobile, Alabama v. Bolden, supra*, requires a court to establish a finding of discriminatory purpose before declaring a fifteenth amendment violation of voting rights.[10]

In *Voter Information Project*, 612 F.2d 208 (5th Cir. 1980), a panel composed of Judges Jones, Brown and Rubin (opinion by Judge Brown) held a suit that alleged the at-large scheme for electing city judges in Baton Rouge invidiously diluted the voting strength of black persons in violation of the fourteenth and fifteenth amendments to the United States Federal Constitution, and 42 U.S.C. § 1983, could not be dismissed when the complaint alleges purposeful discrimination. At the trial level, Judge West relied on his reasoning in *Wells, supra*, that the one man,

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[9] In *McMillian v. Escambia City, Fla.*, the Fifth Circuit held the *Arlington Heights'* "purposeful discrimination" standard is appropriate in fourteenth amendment voter discrimination claims.

[10] Although there is a conflict between the requirement of "discriminatory effect" in Section 2, which is intended to enforce the fifteenth amendment, and the requirement of "purposeful discrimination" for a fifteenth amendment violation standing alone, the Senate Judicary Committee addressed this point and recognized Congress' limited ability to adjust the burden of proving Voting Rights Violations in its "Voting Rights Act Extension" Committee Report.

> Certainly, Congress cannot overturn a substantive interpretation of the Constitution by the Supreme Court. Such rulings can only be altered under our form of government by constitutional amendment or by a subsequent decision by the Supreme Court.
>
> Thus Congress cannot alter the judicial interpretations in *Bolden* of the fourteenth and fifteenth amendments by simple statute. But the proposed amendment to Section 2 does not seek to reverse the court's constitutional interpretation.

S.Rep. 97-417, 97 Cong. 2d Sess. (1982), p. 41.

The Supreme Court, the only body empowered to interpret the Federal Constitution, has not seen fit to overrule its repeated determination that the fourteenth and fifteenth amendment claims require "purposeful discrimination."

one vote principle did not apply to the elections of judges, and dismissed plaintiffs' suit. Judge Brown reversed, holding that the "one man, one vote" principle as espoused in *Wells, supra*, was not enough to dismiss plaintiff's complaint. The *Voter Information Court* found:

> The problem with the District Court's opinion, however, is that it assumes the "one man, one vote" principle was the exclusive theory of plaintiff's complaints. In addition to a rather vaguely formulated "one man, one vote" theory, plaintiffs contend that both in design and operation, the at-large schemes dilute the voting strength of black citizens and prevent blacks from being elected as judges. As the complaint attacking the city judge election system alleges:
>
> > 25. The sole purpose of the present at-large system of election of City Judge is to insure that the white majority will continue to elect all white persons for the offices of City Judge.
> >
> > 26. The present at-large system was instituted when "Division B" was created as a reaction to increasing black voter registration and for the express purpose of diluting and minimizing the effect of the increased black vote.
> >
> > 27. In Baton Rouge, there is a continuing history of "bloc voting" under which when a black candidate opposes a white candidate, the white majority consistently casts its votes for the white candidate, irrespective of the relative qualifications.
>
> Plaintiffs contend that since most of the black population of Baton Rouge and E. Baton Rouge Parish is concentrated in a few geographic areas, black citizens

> could, under a single member district plan, elect at least some black judges.

612 F.2d at 211.

The *Voter Information Project* Court held the plaintiff's complaint contained sufficient allegations of intentional discrimination against black voters to survive a motion to dismiss: "If plaintiffs can prove that the purpose and operative effect of such purpose of the at-large election schemes in Baton Rouge is to dilute the voting strength of black citizens, then they are entitled to some form of relief." 612 F.2d at 212. Thus, the *Voter Information Project* requires that "purpose and operative effect" be pled in a fourteenth and fifteenth amendment challenge to a judicial apportionment plan.

The complaint in the instant case states, in pertinent part:

> Because of the official history of racial discrimination in Louisiana's First Supreme Court District, the wide spread prevalence of racially polarized voting in the district, the continuing effects of past discrimination on the plaintiffs, the small percentage of minorities elected to public office in the area, the absence of any black elected to the Louisiana Supreme Court from the First District, and the lack of any justifiable reason to continue the practice of electing two Justices at-large from the New Orleans area only, plaintiffs contend that the current election procedures for selecting Supreme Court justices from the New Orleans area dilutes minority voting strength and therefore violates the 1965 Voting Rights Act, as amended.

(See Plaintiffs' Complaint, p.5). Later on, the Complaint alleges:

> The defendants actions are in violation of the Fourteenth and Fifteenth Amendment to the United States

> Constitution and 42 U.S.C. § 1983 in that the purpose and effect of their actions is to dilute, minimize, and cancel the voting strength of the plaintiffs.

(*Id.*, p. 6.)

Although "purpose and effect" language in the second quotation above broadly read may imply plaintiffs' intention to plead discriminatory intent, it is this Court's considered opinion, based on the complaint as a whole, that plaintiffs intend to prove this claim based on a theory of "discriminatory effect" and not on a theory of "discriminatory intent." *City of Mobile Alabama v. Bolden, supra.* For example, plaintiffs' complaint does not allege the system by which the Louisiana Supreme Court Justices are elected was instituted with specific intent to discriminate. This contrasts with the specific allegations in *Voter Information Project, supra.* Accordingly, plaintiffs lack the requisite allegations in order to prove a violation of the fourteenth or fifteenth amendment to the Federal Constitution. The Court reserves the right for plaintiffs to reurge its fourteenth and fifteenth amendment claims as they relate to the Court's ruling that plaintiffs' complaint only alleges "discriminatory effect."

Accordingly, unless plaintiffs' complaint is amended within ten (10) days of the entry of this opinion, the Clerk of Court is directed to enter judgment DISMISSING plaintiffs' claim at their cost.

New Orleans, Louisiana, this 1st day of May, 1987.

/s/ CHARLES SCHWARTZ, JR.
Charles Schwartz, Jr.
United States District Judge

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 87-3463

RONALD CHISOM, ET AL., PLAINTIFFS-APPELLANTS

versus

EDWIN EDWARDS, ET AL., DEFENDANTS-APPELLEES

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA

February 29, 1988

Before BROWN, JOHNSON, and HIGGINBOTHAM, Circuit Judges. JOHNSON, Circuit Judge:

Plaintiffs, black registered voters in Orleans Parish, Louisiana, raise constitutional challenges to the present system of electing Louisiana Supreme Court Justices from the First Supreme Court District. Plaintiffs allege that the current at-large system of electing Justices from the First District impermissibly dilutes the voting strength of black voters in Orleans Parish in violation of Section 2 of the Voting Rights Act of 1965, as amended in 1982 and the fourteenth and fifteenth amendments. The district court dismissed the section 2 claim pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim, finding that section 2 does not apply to the election of state judges. Concluding that section 2 does so apply, we reverse.

The primary issue before this Court is whether section 2 of the Voting Rights Act applies to state judicial elections.

I. FACTS AND PROCEDURAL HISTORY

The facts are undisputed. Currently, the seven Justices on the Supreme Court of Louisiana are elected from six geographical judicial districts. Five of the six districts elect one Justice each. However, the First District, comprised of four parishes (Orleans, St. Bernard, Plaquemines, and Jefferson Parishes), elects two Justices at-large.

The population of the four parish First Supreme Court District is approximately thirty-four percent black and sixty-three percent white. The registered voter population reveals a somewhat similar percentage breakdown, with approximately thirty-two percent black and sixty-eight percent white. Over half of the four parish First Supreme Court District's population and over half of the district's registered voters live in Orleans Parish. Importantly, Orleans Parish has a fifty-five percent black population and a fifty-two percent black registered voter population. Plaintiffs seek a division of the First District into two single-member districts, each to elect one Justice. Under the plaintiffs' plan of division, one proposed district would be composed of Orleans Parish with a greater black population and black registered voter population than white. The other proposed district would be composed of Jefferson, Plaquemines, and St. Bernard Parishes; this district would have a substantially greater white population and white registered voter population than black. It is particularly significant that no black person has ever been elected to the Louisiana Supreme Court, either from the First Supreme Court District or from any one of the other five judicial districts.

To support their voter dilution claim, plaintiffs cite, among other factors, a history of purposeful official discrimination on the basis of race in Louisiana and the existence of widespread racially polarized voting in elections involving black and white candidates. Specifically, plaintiffs allege in their complaint:

> Because of the official history of racial discrimination in Louisiana's First Supreme Court District, the wide spread prevalence of racially polarized voting in the district, the continuing effects of past discrimination on the plaintiffs, the small percentage of minorities elected to public office in the area, the absence of any blacks elected to the Louisiana Supreme Court from the First District, and the lack of any justifiable reason to continue the practice of electing two Justices at-large from the New Orleans area only, plaintiffs contend that the current election procedures for selecting Surpreme Court Justices from the New Orleans area dilutes minority voting strength and therefore violates the 1965 Voting Rights Act, as amended.

On May 1, 1987, the district court dismissed plaintiffs' complaint for failure to state a claim upon which relief may be granted. In its opinion accompanying the dismissal order, the district court concluded that section 2 of the Voting Rights Act does not apply to the election of state judges. To support this conclusion, the district court relied primarily on the amended language in section 2 which states "to elect representatives of their choice." The district court reasoned that since judges are not "representatives," judicial elections are therefore not within the protective ambit of section 2. Focusing on a perceived inherent difference between representatives and judges, the district court stated, "[j]udges, by their very definition, do not

represent voters but are 'appointed [or elected] to preside and administer the law.' " (citation omitted). The district court further relied on what was understood to be a lack of any reference to judicial elections in the legislative history of section 2, and on previous court decisions establishing that the "one person, one vote" principle does not apply to judicial elections. As to plaintiffs' fourteenth and fifteenth amendment challenges, the district court determined that plaintiffs had failed to plead an intent to discriminate with sufficient specificity to support their constitutional claims. Plaintiffs appeal the district court's dismissal of both their statutory and constitutional claims.

In an opinion just released, the Sixth Circuit, addressing a complaint that the present system of electing municipal judges to the Hamilton County Municipal Court in Ohio violates section 2, concluded that section 2 does indeed apply to the judiciary. Mallory v. Eyrich, No. 87-3838, slip op. (6th Cir. Feb. 12, 1988). Other than our district court, only two district courts have ruled on the coverage of section 2 in this context. The Mallory district court, subsequently reversed, concluded that section 2 does not extend to the judiciary. Mallory v. Eyrich, 666 F. Supp. 1060 (S.D. Ohio 1987). The other district court, Martin v. Allain, 658 F. Supp. 1183 (S.D. Miss. 1987), determined that section 2 does apply to the judicial branch. After consideration of the language of the Act itself; the policies behind the enactment of section 2; pertinent legislative history; previous judicial interpretations of section 5, a companion section to section 2 in the Act; and the position of the United States Attorney General on this issue; we conclude that section 2 does apply to the election of state court judges. We therefore reverse the judgment of the district court.

II. DISCUSSION

A. The Plain Language of the Act

The Voting Rights Act was enacted by Congress in 1965 for a broad remedial purpose—"to rid the country of racial discrimination in voting." South Carolina v. Katzenbach, 383 U.S. 301, 315 (1966). Since the inception of the Act, the Supreme Court has consistently interpreted the Act in a manner which affords it "the broadest possible scope" in combatting racial discrimination. Allen v. State Board of Elections, 393 U.S. 544, 565 (1969). As a result, the Act effectively regulates a wide range of voting practices and procedures. *See* United States v. Sheffield Board of Commissioners, 435 U.S. 110, 122-23 (1978). Referred to by the Supreme Court as a provision which "broadly prohibits the use of voting rules to abridge exercise of the franchise on racial grounds," Katzenbach, 383 U.S. at 316, section 2 of the Voting Rights Act of 1965, prior to its amendment in 1982, provided as follows:

> No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title.

Congress amended section 2 in 1982 in response to the Supreme Court's decision in Mobile v. Bolden, 446 U.S. 55 (1980), wherein the Court concluded that section 2 operated to prohibit only intentional acts of discrimination by state officials. Thereafter, Congress, in disagreement with the high court's pronouncement, amended section 2 with language providing that proof of intent is not required to successfully prove a section 2 violation. In-

stead, Congress adopted the "results" test, whereby plaintiffs may prevail under section 2 by demonstrating that, under the totality of the circumstances, a challenged election law or procedure has the effect of denying or abridging the right to vote on the basis of race. However, while effecting significant change through the 1982 amendments, Congress specifically retained the operative language or original section 2 defining the section's coverage —"[n]o voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed. . . ." Section 2, as amended in 1982, now provides:

> (a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, as provided in subsection (b) of this section.
>
> (b) A violation of subsection (a) is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: *Provided*, That nothing in this section establishes a right to have members of a protected class

> elected in numbers equal to their proportion in the population.

Section 14(c)(1), which defines "voting" and "vote" for purposes of the Act, sets forth the types of election practices and elections which are encompassed within the regulatory sphere of the Act. Section 14(c)(1) states,

> The terms "vote" of "voting" shall include all action necessary to make a vote effective in any primary, special, or general election, including, but not limited to, registration, listing pursuant to this subchapter or other action required by law prerequisite to voting, casting a ballot, and having such ballot counted properly and included in the appropriate totals of votes cast with respect to candidates for public or party office and propositions for which votes are received in an election.

Clearly, judges are "candidates for public or party office" elected in a primary, special, or general election: therefore, section 2, by its express terms, extends to state judicial elections. This truly is the only construction consistent with the plain language of the Act.[1]

In Dillard v. Crenshaw County, 831 F. 2d 246 (11th Cir. 1987), the Eleventh Circuit addressed the issue of the coverage of section 2. In Dillard, the court rejected the defendant county's implicit argument that the election of an at-large chairperson of a county commission was not covered by section 2 due to that position's administrative, as opposed to legislative, character. The Dillard court stated,

> Nowhere in the language of Section 2 nor in the legislative history does Congress condition the applica-

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[1] Evidence of congressional intent to reach all types of elections, regardless of who or what is the object of the vote, is the fact that votes on *propositions* are within the purview of the Act. Section 14(c)(1).

> bility of Section 2 on the function performed by an elected official. The language is only and uncompromisingly premised on the face of nomination or election. Thus, on the face of Section 2 it is irrelevant that the chairperson performs only administrative and executive duties. It is only relevant that Calhoun County has expressed an interest in retaining the post as an electoral position. Once a post is open to the electorate, and if it is shown that the context of that election creates a discriminatory but corrigible election practice, it must be open in a way that allows racial groups to participate equally.

Id. at 250.

The State asserts that by amending section 2 in 1982, Congress intentionally grafted a limitation on section 14(c)(1) that "candidates for public or party office" only include "representatives"; since judges are not "representatives," state judicial elections are exempt from the protective measures of the Act. In making this contention, the State, as well as the district court, points to the distinctive functions of judges as opposed to other elected officials. Specifically, the district court, citing Wells v. Edwards, 347 F. Supp. 453 (M.D. La. 1972), *aff'd*, 409 U.S. 1095 (1973), notes that the "one person, one vote" principle of apportionment has been held not to apply to the judicial branch of government on the basis of this distinction. *See also* Voter Information Project v. City of Baton Rouge, 612 F.2d 208 (5th Cir. 1980). In Wells, the plaintiff sought reapportionment of the Louisiana Supreme Court Judicial Districts in accordance with one person, one vote principles. The Wells court rejected the plaintiff's claim, reasoning that the "primary purpose of one-man, one-vote apportionment is to make sure that each official member of an elected body speaks for approximately the same number of constitutents." Wells, 347 F. Supp. at 455. The district court then concluded that since judges do not rep-

resent, but instead serve people, the rationale behind one person, one vote apportionment of preserving a representative form of government is not relevant to the judiciary. *Id.*

In Voter Information, this Court, bound by the holding in Wells due to the Supreme Court's summary affirmance of that decision, rejected the plaintiffs' claim for reapportionment of judicial districts on the one person, one vote theory. Voter Information, 612 F.2d at 211. However, the Voter Information Court then emphasized that the plaintiffs further asserted claims of racial discrimination under the fifteenth amendment which resulted in the dilution of black voting strength. Recognizing the difference between the two types of claims, the Court expressly rejected the applicability of the Wells decision to claims of racial discrimination, stating,

> [T]he various 'one man one vote' cases involving Judges make clear that they do not involve claims of race discrimination as such.
>
> To hold that a system designed to dilute the voting strength of black citizens and prevent the election of blacks as Judges is immune from attack would be to ignore both the language and purpose of the Fourteenth and Fifteenth Amendments. The Supreme Court has frequently recognized that election schemes not otherwise subject to attack may be unconstitutional when designed and operated to discriminate against racial minorities.

Id. (footnote omitted).

We, like the Voter Information Court, are bound by the Supreme Court's affirmance of Wells and its holding that the one person, one vote principle does not extend to the judicial branch of government. However, the district court's reliance on Wells in the instant case is misplaced as

we are not concerned with a complaint seeking reapportionment of judicial districts on the basis of population deviations between districts. Rather, the complaint in the instant case involves claims of racial discrimination resulting in vote dilution under section 2 of the Voting Rights Act and the fourteenth and fifteenth amendments. Therefore, the district court erred to the extent it relied on Wells in support of its conclusion that section 2 does not apply to the judiciary.[2]

The Voting Rights Act was enacted, in part, to facilitate the enforcement of the guarantees afforded by the Constitution. Indeed, section 2, as originally written, no more than elaborated on the fifteenth amendment, providing statutory protection consonant with that of the constitutional guarantee. Mobile, 446 U.S. at 60. Therefore, the reasoning utilized by the Court in Voter Information to extend the protection from racial discrimination provided by the fourteenth and fifteenth amendments to the judiciary compels a conclusion by this Court that the protection from racial discrimination provided by section 2 likewise extends to state judicial elections.

It is difficult, if not impossible, for this Court to conceive of Congress, in an express attempt to expand the

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[2] The distinction between equal protection principles applicable to claims based on one person, one vote principles of apportionment and those based on racial discrimination is not without prior Supreme Court precedent. *See* White v. Regester, 412 U.S. 755 (Court reversed decision of district court that reapportionment plan for Texas House of Representatives violated one person, one vote principles, but affirmed the district court's conclusion that a particular portion of the plan unlawfully diluted minority voting strength.). *See also* Gaffney v. Cummings, 412 U.S. 735, 751 (1973) ("A districting plan may create multimember districts perfectly acceptable under equal population standards, but invidiously discriminatory because they are employed 'to minimize or cancel out the voting strength of racial or political elements of the voting population.' ") (citations omitted).

coverage of the Voting Rights Act, to have in fact amended the Act in a manner affording minorities less protection from racial discrimination than that provided by the Constitution. We conclude today that section 2 as amended in 1982, provides protection commensurate with the fourteenth and fifteenth amendments; therefore, in accordance with this Court's decision in Voter Information, section 2 necessarily embraced judicial elections within its scope. Any other construction of section 2 would be wholly inconsistent with the plain language of the Act and the express purpose which Congress sought to attain in amending section 2; that is, to expand the protection of the Act.

B. The Legisiative History of Section 2

Our conclusion today finds further support in the legislative history of the 1982 amendments to section 2. An overriding principle which guides any analysis of the legislative history behind the Voting Rights Act is that the Act must be interpreted in a broad and comprehensive manner in accordance with congressional intent to combat racial discrimination of any kind in all voting practices and procedures. Thus, in the absence of *any* legislative history warranting a conclusion that section 2 does not apply to state judicial elections, the only acceptable interpretation of the Act is that such elections are so covered. *See* Sheffield, 435 U.S. 110.[3]

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[3] In Sheffield, the Supreme Court declined to adopt a narrowing construction of § 5 and the preclearance requirements of the Act whereby § 5 would cover only counties and political units that conduct voter registration. "[I]n view of the structure of the Act, it would be unthinkable to adopt the District Court's construction unless there were persuasive evidence either that § 5 was intended to apply only to changes affecting the registration process or that Congress clearly manifested an intention to restrict § 5 coverage. . . ." 435 U.S. at 122.

As previously noted, Congress amended section 2 in direct response to the Supreme Court's decision in Mobile v. Bolden,

> The Senate Report states that amended [section] 2 was designed to restore the "results test"—the legal standard that governed voting discrimination cases prior to our decision in Mobile v. Bolden. . . . Under the "results test," plaintiffs are not required to demonstrate that the challenged electoral law or structure was designed or maintained for a discriminatory purpose.

Thornburg v. Gingles, ____ U.S. ____, 106 S. Ct. 2752 , 2763 n.8 (1986) (citations omitted). In amending section 2, Congress preserved the operative language of subsection (a) defining the coverage of the Act and merely added subsection (b) to adopt the "results test" for proving a violation of section 2. In fact, the language added by Congress in subsection (b)—"to participate in the political process and to elect representatives of their choice"—is derived almost verbatim from the Supreme Court's standard governing claims of vote dilution on the basis of race set forth in White v. Regester, 412 U.S. 755 (1973), prior to Mobile v. Bolden. *See* S. Rep. No. 417, 97th Cong., 2d Sess. 27, *reprinted in* 1982 U.S. Code Cong. & Admin. News 177, 205 (Congress' stated purpose in adding subsection (b) was to "embod[y] the test laid down by the Supreme Court in White."). In White, the Court stated "[t]he plaintiffs' burden is to produce evidence . . . that [the minority groups'] members had less opportunity than did other residents in the district to participate in the political processes and to elect legislators of their choice." *Id.* at 766.[4]

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[4] It might be argued that since the Supreme Court used the term "legislators" and Congress chose "representatives," Congress thereby rejected language limiting the coverage of § 2 to legislators. The better

Further, contrary to the statement in the district court's opinion that the legislative history of the 1982 amendments does not address the issue of section 2 applying to the judiciary, Senator Orrin Hatch, in comments contained in the Senate Report, stated that the term " 'political subdivision' encompasses all governmental units, including city and county councils, school boards, *judicial districts*, utility districts, as well as state legislatures." S. Rep. 417 at 151 (emphasis added). While the above statement by Senator Hatch is not a definitive description of the scope of the Act, we believe the statement provides persuasive evidence of congressional understanding and belief that section 2 applies to the judiciary, especially since the Report is silent as to any dissent by senators from Senator Hatch's description.

Additionally, the Senate and House hearings on the various bills regarding the extension of the Voting Rights Act in 1982 are replete with references to the election of judicial officials under the Act. The references primarily occur in the context of statistics presented to Congress indicating advances or setbacks of minorities under the Act. The statistics chart the election of minorities to various elected positions, including judges. *See Extension of the Voting Rights Act: Hearings on H.R. 1407, H.R. 1731, H.R. 2942, and H.R. 3112, H.R. 3198, H.R. 3473 and H.R. 3498 Before the Subcomm. on Civil and Constitutional Rights of the House Comm. on the Judiciary*, 97th Cong. 1st Sess. 38, 193, 239, 280, 503, 574, 804, 937, 1182, 1188, 1515, 1528, 1535, 1745, 1839, 2647 (1981); *Voting Rights Act: Hearings on S. 53, S. 1761, S. 1975, S. 1992, and H.R. 3112 Before the Subcomm. on the Constitution*

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analysis is that Congress did not use the term "representatives" with a specific intent to limit the section's application to any elected officials. Had Congress wished to do so, it could have easily promulgated express language to effectuate that intent.

of the Senate Comm. on the Judiciary, 97th Cong. 2d Sess. 669, 748, 788-89 (1982). Once again, the legislative history does not reveal any dissent from the proposition that such statistics were properly considered by Congress in amending the Act. Finally, throughout the Senate Report on the 1982 amendments to section 2, Congress uses the terms "officials," "candidates," and "representatives" interchangeably when explaining the meaning and purpose of the Act. This lack of any consistent use of the term "representatives" indicates that Congress did not intentionally choose that term in an effort to exclude certain types of elected officials from the coverage of the Act.

In contrast to the examples of legislative history which plaintiffs cite in support of their position that section 2 applies to state judicial elections, the State offers no convincing evidence in the legislative history contrary to the plaintiff's interpretation of the Act. Instead, the State relies primarily on the plain meaning of the word "representative" to assert that judges are exempt from the Act. The State's position is untenable.[5] Judges, while not "representatives"

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[5] The State asserts that the Dole compromise prohibiting proportional representation evidences congressional intent that § 2 only apply to legislative officials. Proportional representation, the State continues, is relevant to the legislature; therefore, Congress intended § 2 to apply only to the election of legislators. However, what belies the State's argument is that proportional representation may occur in any election wherein the people elect individuals to comprise a group. For instance, Louisiana elects seven Justices to comprise the Supreme Court. Certainly, the prohibition on proportional representation in § 2(b) applies in such a situation to prevent a legal requirement that the number of blacks on the Louisiana Supreme Court correspond to the percentage of blacks in the Louisiana population. Moreover, the State conceded at oral argument that executive officials could be covered by § 2, underlying their assertion that congressional fear of proportional representation evidenced intent that § 2 only apply to the legislature.

in the traditional sense, do indeed reflect the sentiment of the majority of the people as to the individuals they choose to entrust with the responsibility of administering the law. As the district court held in Martin v. Allain:

> [J]udges do not "represent" those who elect them in the same context as legislators represent their constituents. The use of the word "representatives" in Section 2 is not restricted to legislative representatives but denotes anyone selected or chosen by popular election from among a field of candidates to fill an office, including judges.

658 F. Supp. at 1200.

C. *Section 5 and Section 2*

The plaintiffs further support their position that judicial elections are covered by section 2 by citing to the recent case of Haith v. Martin, 618 F. Supp. 410 (E.D.N.C. 1985), *aff'd*, ____ U.S. ____, 106 S. Ct. 3268 (1986), wherein the district court held that judicial elections are covered by section 5 and the preclearance requirements of the Act. In Haith, the defendant state officials sought to exempt the election of superior court judges in North Carolina from the preclearance requirements of section 5 by relying on the cases holding that the one person, one vote principle does not apply to the judicial branch of government. In an analysis strikingly similar to that employed by the Court in Voter Information, the district court in Haith rejected the defendants' arguments as misplaced due to the fact that the plaintiff's claim was one based on discrimination, not malapportionment. The Haith court stated "[a]s can be seen, the Act applies to all *voting* without any limitation as to who, or what, is the object of the vote." 618 F. Supp. at 413. *See also* Kirksey v. Allain, 635 F. Supp. 347, 349 (S.D. Miss. 1986) ("Given

the expansive interpretation of the Voting Rights Act and § 5, this Court is compelled to agree with the pronouncement in Haith v. Martin" that section 5 applies to the judiciary.).

In the instant case, the State argues that the Supreme Court's affirmance of Haith does not compel a conclusion that section 2 applies to judicial elections as section 5 involves the mechanics of voting, while section 2 involves the fundamental right to vote for those who govern. We reject this asserted distinction. If, for instance, Louisiana were to enact an election statute providing that no blacks would be able to vote in elections for Louisiana Supreme Court Justices, it is undisputed, after Haith, that such a statute would be invalidated under the preclearance requirements of section 5. To hold, as the State asserts, that such an egregious statute would not be subject to the requirements of section 2 as well would lead to the incongruous result that, while Louisiana could not adopt such a statute in 1988, if that statute were in effect prior to 1982, minorities could only challenge the statute under the Constitution and not the Voting Rights Act. Such a result would be totally inconsistent with the broad remedial purpose of the Act. Moreover, section 5 and section 2, virtually companion sections, operate in tandem to prohibit discriminatory practices in voting, whether those practices originate in the past, present, or future. Section 5 contains virtually identical language defining its scope to that of section 2—"any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting. . . ." Therefore, statutory construction, consistency, and practicality point inexorably to the conclusion that if section 5 applies to the judiciary, section 2 must also apply to the judiciary. *See* Pampanga Mills v. Trinidad, 279 U.S. 211, 217-218 (1929).

D. *The Attorney General's Interpretation*

In United States v. Sheffield Board of Commissioners, 435 U.S. at 131, the Supreme Court concluded that the contemporaneous construction of the Act by the Attorney General is persuasive evidence of the original congressional understanding of the Act, "especially in light of the extensive role the Attorney General played in drafting the statute and explaining its operation to Congress." Since its inception, the Attorney General has consistently supported an expansive, not restrictive, construction of the Act. Testifying at congressional hearings prior to the passage of the Act in 1965, the Attorney General stated that "every election in which registered voters are permitted to vote would be covered" by the Act. *Voting Rights: Hearing Before Subcomm. No. 5 of the House Judiciary Comm.*, 89th Cong. 1st Sess. (1965), at 21. *See also* Allen, 393 U.S. at 566-67. Continuing the trend of broadly interpreting the Act to further its remedial purpose, the Attorney General has filed an amicus curiae brief in the instant case in which he maintains that the "plain meaning of [the language in section 2] reaches all elections, including judicial elections" and that the preexisting coverage of section 2 was not limited by the 1982 congressional amendments. This construction of the Act by the Attorney General further bolsters our holding today that section 2 does apply to state judicial elections.

E. *Plaintiffs' Constitutional Claims*

Plaintiffs also appeal the district court's dismissal of their constitutional claims for failure to plead specific discriminatory intent. In their complaint, plaintiffs allege, in pertinent part:

> The defendant's actions are in violation of the Fourteenth and Fifteenth amendments to the United States

> Constitution and 42 U.S.C. Section 1983 in that the purposes and effect of their actions is to dilute, minimize, and cancel the voting strength of the plaintiffs.

In the instant case, the district court was correct in concluding that discriminatory purpose is a prerequisite to recovery under the fourteenth and fifteenth amendments. *See* Washington v. Davis, 426 U.S. 229, 239-241 (1976). However, the district court erred in finding that plaintiffs' complaint did not establish a theory of "discriminatory intent." In Voter Information, this Court held that if "plaintiffs can prove that the purpose and operative effect of such purpose" of the challenged electoral practices is to dilute minority voting strength, the plaintiffs are entitled to some form of relief. Voter Information, 612 F.2d at 212. When compared with the complaint in Voter Information, the plaintiffs' complaint in the instant case is sufficient to raise a claim of racial discrimination under the fourteenth and fifteenth amendments.[6]

III. *CONCLUSION*

Where racial discrimination exists, it is not confined to elections for legislative and executive officials; in such in-

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[6] In Voter Information, the plaintiffs' complaint alleged,

> 25. The sole purpose of the present at-large system of election of City Judge is to ensure that the white majority will continue to elect all white persons for the office of City Judge.
>
> 26. The present at-large system was instituted when "Division B" was created as a reaction to increasing black voter registration and for the express purpose of diluting and minimizing the effect of the increased black vote.
>
> 27. In Baton Rouge, there is a continuing history of "bloc voting" under which when a black candidate opposes a white candidate, the white majority consistently casts its votes for the white candidate, irrespective of relative qualifications.

612 F.2d at 211.

stance, it extends throughout the entire electoral spectrum. Minorities may not be prevented from using section 2 in their efforts to combat racial discrimination in the election of state judges; a contrary result would prohibit minorities from achieving an effective voice in choosing those individuals society elects to administer and interpret the law. The right to vote, the right to an effective voice in our society, cannot be impaired on the basis of race in any instance wherein the will of the majority is expressed by popular vote.

For the reasons set forth above, we reverse the judgment of the district court and remand for proceedings not inconsistent with this opinion.

REVERSED AND REMANDED

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA

Civil Action No. 86-4075
Section A

RONALD CHISOM, ET AL., PLAINTIFFS,

UNITED STATES OF AMERICA, PLAINTIFF-INTERVENOR,

v.

CHARLES E. ROEMER, GOVERNOR OF THE STATE OF LOUISIANA; WALTER McKEITHEN, SECRETARY OF STATE OF THE STATE OF LOUISIANA; JERRY FOWLER, COMMISSIONER OF ELECTIONS OF THE STATE OF LOUISIANA, DEFENDANTS.*

COMPLAINT IN INTERVENTION

The United States of America alleges:

1. The Attorney General files this complaint in intervention, on behalf of the United States, pursuant to Title IX of the Civil Rights Act of 1964, 42 U.S.C. 2000h-2, Sections 2 and 12(d) of the Voting Rights Act of 1965, 42 U.S.C. 1973 and 1973j(d) and pursuant to 28 U.S.C. 2201. This lawsuit is filed to seek redress for a denial of "equal protection of the laws . . . on account of race, color, re-

* At the time the original complaint in this matter was filed Edwin Edwards was Governor of the State of Louisiana and James H. Brown was Secretary of State. Pursuant to Rule 25, Federal Rules of Civil Procedure, the current governor and secretary of state are substituted automatically as parties.

ligion, sex or national origin" and to otherwise enforce rights guaranteed by the Fourteenth and Fifteenth Amendments. 42 U.S.C. 2000h-2.

2. The Attorney General has certified that this case is of "general public importance," within the meaning of Title IX. 42 U.S.C. 2000h-2. The certificate of the Attorney General is appended to this complaint and is incorporated herein.

3. This Court has jurisdiction of this action pursuant to 42 U.S.C. 1793j(f) and 28 U.S.C. 1345.

4. Defendant Charles E. Roemer is the Governor of the State of Louisiana and is responsible under the state's constitution for the execution of the laws of the state including those laws affecting the election of members of the Louisiana Supreme Court. Defendant Walter McKeithen is the Secretary of State of the State of Louisiana and, pursuant to the state constitution, is the chief election officer of the state. Defendant Jerry Fowler is the Commissioner of Elections of the State of Louisiana and is charged with the responsibility to administer various election laws including those related to voter registration and the eligibility to vote in elections for the supreme court. Each defendant is sued in his official capacity.

5. According to the 1980 Census, the State of Louisiana had a population of 4,205,900 of whom 1,238,241 (29.44%) were black persons. The census further indicated that there are 2,875,432 persons eighteen (18) years of age and older (voting age population) of whom 766,187 (26.44) were black persons.

6. Pursuant to state law, the Louisiana Supreme Court consists of seven members. The members of the court are elected in public elections and serve terms of ten years. For purposes of electing supreme court justices, the state is divided into five single-member election districts and one multi-member election district; the multi-member district

is labeled the First Supreme Court District and elects two members to the court. The First Supreme Court District consists of Jefferson, Orleans, Plaquemines and St. Bernard Parishes.

7. Orleans Parish contains the largest population of any parish in the State of Louisiana and also the largest number of black citizens in any parish. A majority of those persons residing in Orleans Parish are black persons. The multi-member supreme court district used in this area of the state, however, combines majority black Orleans Parish with three other, heavily-white, parishes in such a manner that black citizens comprise approximately one third of the total population of the district and approximately thirty percent of the voting age population of the district.

8. Elections, including those for judicial offices, conducted in the parishes which constitute the First District are characterized by a pattern of racially polarized voting.

9. The State of Louisiana has a history of official discrimination that has touched the right of black citizens to register, to vote and otherwise to participate in the political process.

10. Black citizens who reside in the First District bear the effects of discrimination in education, employment and health, which hinders their ability to participate in the political process.

11. If the members of the supreme court were elected pursuant to a plan utilizing single-member district exclusively, it is likely that black citizens residing in the Orleans Parish area would constitute the majority of the citizens residing in one district.

12. No valid state interest is served by the incorporation of a multi-member district into the otherwise single-member district election plan, particularly in light of the disparate racial impact of the multi-member feature.

13. The incorporation of the multi-member district in the State of Louisiana's method for electing members of its supreme court is a standard, practice or procedure which, within the context of the totality of the circumstances described in the preceding paragraphs, results in a denial or abridgment of the right to vote on account of race or color in violation of Section 2 of the Voting Rights Act, 42 U.S.C. 1973.

WHEREFORE, the United States prays that the Court enter a judgment:

a) Declaring that the incorporation of the multi-member district in the election plan for the Louisiana Supreme Court is violative of Section 2 of the Voting Rights Act, 42 U.S.C. 1973;

b) Enjoining the defendants, their agents and successors in office, and all persons acting in concert with them from administering, implementing or conducting any election for members of the Louisiana Supreme Court in the multi-member district presently in the election plan;

c) Ordering the defendants to devise a new election plan which corrects the multi-member district violation in a manner consistent with federal law and develop a schedule to implement the new plan and to obtain the necessary preclearance, pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c, of the new plan and implementation schedule.

Plaintiff further prays that the Court grant such additional relief as the interests of justice may require, together with the costs and disbursements of this action.

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

Civil Action No. 86-4075
Section A

RONALD CHISOM, ET AL., PLAINTIFFS,

UNITED STATES OF AMERICA, APPLICANT FOR INTERVENTION,

v.

CHARLES E. ROEMER, GOVERNOR OF THE STATE OF LOUISIANA; WALTER McKEITHEN, SECRETARY OF STATE OF THE STATE OF LOUISIANA; JERRY FOWLER, COMMISSIONER OF ELECTIONS OF THE STATE OF LOUISIANA, DEFENDANTS.

CERTIFICATE OF THE ATTORNEY GENERAL

I hereby certify that the case of *Ronald Chisom, et al.* v. *Charles E. Roemer, et al.*, Civil Action No. 86-4075 (E.D. La.), which seeks relief from an alleged denial of equal protection of the laws based on race, color, religion, sex, or national origin, is of general public importance within the meaning of Section 902 of the Civil Rights Act of 1964.

This certificate is made pursuant to the provisions of Section 902 of the Civil Rights Act of 1964, 42 U.S.C. 2000h-2, and in support of the complaint to which it is attached.

Signed this 4th day of August 1988.

/s/ Edwin Meese III

EDWIN MEESE III
Attorney General

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

CIVIL ACTION NUMBER 86-4075

RONALD CHISOM, MARIE BOOKMAN, WALTER WILLARD, MARC MORIAL, LOUISIANA VOTER REGISTRATION/ EDUCATION CRUSADE, AND HENRY A. DILLON, III
PLAINTIFFS

UNITED STATES OF AMERICA, PLAINTIFFS-INTERVENOR

versus

BUDDY ROEMER, IN HIS CAPACITY AS GOVERNOR OF THE STATE OF LOUISIANA; FOX MCKEITHEN, IN HIS CAPACITY AS SECRETARY OF THE STATE OF LOUISIANA; AND JERRY M. FOWLER, IN HIS CAPACITY AS COMMISSIONER OF ELECTIONS OF THE STATE OF LOUISIANA
DEFENDANTS

Section A
Magistrate 6

CLASS ACTION
ANSWER

ANSWER TO COMPLAINT
[as last amended on September 30, 1986]

I.

The first sentence of Paragraph I *Preliminary Statement* needs no answer for it is merely descriptive of the parties

plaintiff. The second sentence of Paragraph I *Preliminary Statement*, which reads as follows:

> Plaintiffs contend that the present system of electing judges, whereby the parish of Orleans, St. Bernard, Plaquemines, and Jefferson elect two Justices to the Louisiana Supreme Court at-large, is a violation of the 1965 Voting Rights Act, as amended, 42 U.S.C. Section 1973 because it dilutes the voting strength of plaintiffs,

is denied.

II.

Except for the last paragraph, the allegations of Paragraph II *Jurisdiction* need no answer for they are merely descriptive of the statutory grounds under which this action has been brought. As to the last sentence of Paragraph II *Jurisdiction* which reads:

> Plaintiffs' claims under the Voting Rights Act and under the Fourteenth and Fifteenth Amendments to the U.S. Constitution must be determined by a district court of three judges pursuant to 28 U.S.C. Sect. 2284 (a),

no answer is necessary, because this Court has already ruled against the assignment of this case to a three-judge court.

III.

The allegations of Paragraph III *Parties* need no answer except to show that the organizational plaintiff cannot be representative of the class of Orleans Parish black registered voters and further except to show that "Buddy Roemer" should be substituted for "Edwin Edwards" and "Mr. Roemer" for "Mr. Edwards." "Fox McKeithen"

should also be substituted for "James H. Browns," (sic) and "Mr. McKeithen" for "Mr. Brown."

IV.

Substantially all of the allegations of Paragraph IV *Class Action Allegations* need no answer for this Court has already made a class action certification; however, the organizational corporate plaintiff is not a registered voter and, therefore, is neither a member, nor representative, of the class.

V.

The allegations of Paragraph V *Facts* reflected in the first eight unnumbered sub-paragraphs are admitted. Answering the last unnumbered sub-paragraph of Paragraph V *Facts,* which reads as follows:

> Because of the official history of racial discrimination in Louisiana's First Supreme Court District, the wide spread prevalence of racially polarized voting in the district, the continuing effects of past discrimination on the plaintiffs, the small percentage of minorities elected to public office in the area, the absence of any blacks elected to the Louisiana Supreme Court from the First District, and the lack of any justifiable reason to continue the practice of electing two Justices at-large from the New Orleans area only, plaintiffs contend that the current election procedures for selecting Supreme Court Justices from the New Orleans area dilutes minority voting strength and therefore violates the 1966 Voting Rights Act, as amended,

defendants deny each and every, all and singular, generally and specifically, the allegations therein contained, and each and every part thereof.

VI.

As to the allegations of Paragraph VI *Causes of Action*, defendants deny each and every, all and singular, generally and specifically, the allegations therein contained, and each and every part thereof.

VII.

As to the allegations of Paragraph VII *Equity*, defendants deny each and every, all and singular, generally and specifically, the allegations therein contained, and each and every part thereof.

FOR FURTHER AND SEPARATE AFFIRMATIVE DEFENSES, DEFENDANTS SAY:

A.

First Separate Affirmative Defense

The complaint, and as amended, fails to state a claim against defendants upon which relief can be granted.

B.

Second Separate Affirmative Defense

It was not the intention of Congress, either expressed or implied, that a state court judiciary selection system be subject to the Voting Rights Act and, therefore, the Voting Rights Act is not applicable in this case.

C.

Third Separate Affirmative Defense

At all times pertinent herein plaintiffs [with the exception of the corporate plaintiff] and the Orleans black voters constituting the class have had an equal opportunity to participate in Louisiana's electoral judicial selection system and are, therefore, not entitled to any relief herein.

D.

Fourth Separate Affirmative Defense

The factual findings of *Major v. Treen,* 574 F. Supp. 325 (E.D. La. 1983), are not reflective of current conditions in Orleans Parish as they exist and have existed at all times pertinent herein.

E.

Fifth Separate Affirmative Defense

To assign one justice to Orleans Parish alone would give Orleans a disproportionate advantage over the remaining Parishes of Louisiana.

F.

Sixth Separate Affirmative Defense

As it relates to judicial elections, there is no dilution in Orleans black voter participation.

G.

Seventh Separate Affirmative Defense

If the Voting Rights Act is applied to the judiciary, then such application is violative of the Tenth, Fourteenth and Fifteenth Amendments to the United States Constitution.

H.

Eighth Separate Affirmative Defense

The statutes and laws concerning the Louisiana judicial selection electoral system are not, in whole or in part, products of racially-discriminatory intent and thus violative of the Fourteenth and Fifteenth Amendments to the United States Constitution. Louisiana first introduced its judicial selection system in its 1852 Constitution, which predated the Fourteenth Amendment [ratified on July 21,

1868] by fifteen years and the Fifteenth Amendment [ratified on February 3, 1870 or February 17, 1870 depending on the effectiveness of New York's withdrawal of its ratification] by seventeen years. The Parishes of Orleans, St. Bernard, Plaquemines, and Jefferson have been together and, as such, have had two justices on the Louisiana Supreme Court since Louisiana's 1879 Constitution.

I.

Ninth Separate Affirmative Defense

By the creation of two districts, one for Orleans Parish and one for the Parishes of St. Bernard, Plaquemines, and Jefferson, so as to create a "black district" for a black candidate and a "white district" for a white candidate, racially safe boroughs are created for candidates. By this means two impotent minorities are created, thereby resulting in their disenfranchment [*sic*] for all practical purposes. As the numbers are alleged in plaintiffs' complaint, as amended, these disenfranchised minorities will consist of 49.16% of the total registered voters in the current First Supreme Court District. Thus, it is to the candidates and not the voters to whom relief is afforded.

J.

Tenth Separate Affirmative Defense

Judges, unlike representatives, embody within themselves the full judicial power of the state. A judge has but one constituent, the lady who is blindfolded and carries both a shield and sword.

K.

Eleventh Separate Affirmative Defense

If vote dilution is found, plaintiffs suggested limitation of a remedy, i.e., split electoral districts, is constitutional-

ly impermissible for the State of Louisiana, through its bicameral legislature, has a vested right to consider an entirely new electoral districting scheme, as well as either an appointed judiciary, as provided for in its Constitutions of 1812, 1845, 1864, 1878, and 1898, or a merit selection plan.

L.

Twelfth Separate Affirmative Defense

Louisiana's 1974 Constitution, which, in pertinent part, provides for the judicial selection system here under attack, was precleared by the Justice Department of the United States of American on November 26, 1974 [thus after the adoption of the Voting Rights Act] except for Article VIII (10 B), which provision was subsequently precleared on June 6, 1983 [thus after the 1982 amendment to the Voting Rights Act].

M.

Thirteenth Separate Affirmative Defense

A requirement that Louisiana must gain preclearance of any judicial selection method through the Justice Department of the United States of America, an intervenor on the plaintiffs' side of this case is not judicially permissible for the Justice Department would thereby sit in the conflicting position as the final arbitrator of the matter when its avowed position in this litigation might have been judicially disapproved as this case proceeds to final judgment.

N.

Fourteenth Separate Affirmative Defense

Since most other states, where violations occur, may alter their judicial selection system without interference

from the Justice Department of the United States of America, Louisiana would not be on the same equal footing with these other states and, therefore, the Voting Rights Act, as written, and applied, in this regard violates the United States Constitution.

WHEREFORE, foregoing premises considered, upon hearing had, the demands of the plaintiffs be, and the same should be, rejected at their cost.

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

Civil Action No. 86-4075
Section A

RONALD CHISOM, ET AL., PLAINTIFFS

UNITED STATES OF AMERICA, INTERVENOR

versus

EDWIN EDWARDS, ET AL.

DEFENDANTS' ANSWER TO COMPLAINT IN INTERVENTION

Now into Court, through undersigned counsel, come the defendants, who, for their answer to the Complaint in Intervention, admit, deny and allege as follows:

1.

The allegations of paragraph 1 need no answer for they are merely descriptive of the legal authority to which reference is made.

2.

The allegations of paragraph 2 are admitted.

3.

The allegations of paragraph 3 are admitted.

4.

The allegations of paragraph 4 are admitted.

5.

The allegations of paragraph 5 are admitted.

6.

The allegations of paragraph 6 are admitted.

7.

Defendants admit the first two sentences of paragraph 7, but deny the remaining sentence of paragraph 7.

8.

The allegations of paragraph 8 are denied.

9.

The allegations of paragraph 9 are denied. Further answering, defendants show there has been no official discrimination in the State of Louisiana for more than the last twenty-five years.

10.

The allegations of paragraph 10 are denied.

11.

The allegations of paragraph 11 are denied.

12.

The allegations of paragraph 12 are denied.

13.

The allegations of paragraph 13 are denied.

WHEREFORE, defendants pray that the foregoing answers be deemed good and sufficient and that upon hearing had the demands of the intervenor be rejected at its cost.

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SPECIAL ASSISTANT ATTORNEYS GENERAL

Supreme Court of the United States

No. 90-757

RONALD CHISOM, ET AL., PETITIONERS

v.

CHARLES E. ROEMER, ET AL.

ORDER ALLOWING CERTIORARI. Filed January 18, 1991.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted. This case is consolidated with 90-1032, *United States v. Charles E. Roemer, Governor of Louisiana, et al.* and a total of one hour is allotted for oral argument.

January 18, 1991

Supreme Court of the United States

No. 90-1032

UNITED STATES, PETITIONER

v.

CHARLES E. ROEMER, GOVERNOR OF LOUISIANA, ET AL.

ORDER ALLOWING CERTIORARI. Filed January 18, 1991.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted. This case is consolidated with 90-757, *Ronald Chisom, et al. v. Charles E. Roemer, et al.* and a total of one hour is allotted for oral argument.

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